KR Thiagarajan & Anor v Karuppan Chettiar Vairavan (administrator of the estate of Karuppan Chettiar Vairavan, deceased)

HIGH COURT (TAIPING) — ORIGINATING SUMMONS NO AB-24NCVC-190–07 OF 2024
NOOR RUWENA J
25 APRIL 2025

Succession — Distribution of estate — Administrator's duties — Defendant as administrator refused to distribute compensation sum in respect of land acquired by government — Plaintiffs as beneficiaries applied to seek their entitlement from deceased's estate — Whether order sought ought to be granted — Rules of Court 2012 O 80 r 2(3)(e) & O 92 r 4

The plaintiffs were the beneficiaries to the estate of the deceased. The defendant, one of the sons of the deceased, was the administrator and beneficiary of the estate, having been appointed as the lawful administrator vide letters of administration in 1997. In a previous suit, the parties had agreed to record a consent order concerning four pieces of land and the amount agreed to be transferred to the plaintiffs was RM515,413.53, comprising half of the compensation awarded in respect of the acquisition of the four pieces of land by the government. Therefore, the plaintiffs filed the present suit, expecting that a settlement would be reached with the defendant for the remaining two pieces of land ('the two lands'). In this originating summons ('encl 1'), the plaintiffs sought the distribution of the compensation sum in respect of the two lands. The plaintiffs averred they had been extremely prejudiced by the defendant's inordinate delay in administering the estate since 1997. They submitted that the court was empowered to do so under O 80 r 2(3)(e) of the Rules of Court 2012 ('the ROC') as the need to apply to the court arose from the defendant's refusal to distribute the monies for the two lands. The defendant submitted that the plaintiffs' application in encl 1 was misconceived premised on the grounds that: (a) the defendant as the administrator of the estate could distribute the compensation sum to the plaintiffs despite the incomplete administration of the estate; and (b) since the defendant had entered into a consent order with another beneficiary ie Karuppan Chettiar Muthu for the distribution of the proceeds of the compensation sum, the plaintiffs were equally entitled to enter into a consent order with the defendant as well.

Held, allowing the application in part:

(1) The plaintiffs' allegations about the defendant's failure to administer the

estate properly was not unfounded. The principle in the case of *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 could not be read in isolation and the defendant could not pick and choose the rulings in that case to suit his position, after admitting that he still had not administered the estate after 27 years of being granted the letters of administration in 1997. The defendant had not shown any proof to substantiate the inordinate delay in distributing the compensation after the monies had been obtained. The defendant was bound to administer the estate and distribute the assets to the beneficiaries and not wait forever to complete the process. The defendant, by refusing to distribute the proceeds of the acquisition money and prolonging the matter when everyone was not getting any younger, had placed the plaintiffs in a vulnerable situation. It was only right and necessary that the court exercised its inherent powers under O 92 r 4 of the ROC to grant the reliefs sought under the application to prevent injustice to the beneficiaries of the estate of the deceased. Given that the defendant had failed to provide any document to support his assertion that he had to administer the estate and settle all the liabilities first, on a balance of probabilities, the plaintiffs had proved that there was nothing to hinder the distribution of at least the compensation for the remaining two pieces of lands (see paras 26, 32, 37–39).

[Bahasa Malaysia summary

Plaintif adalah benefisiari kepada harta pusaka si mati. Defendan, salah seorang anak lelaki si mati, adalah pentadbir dan benefisiari harta pusaka tersebut, setelah dilantik sebagai pentadbir yang sah melalui surat-surat pentadbiran pada tahun 1997. Dalam saman terdahulu, pihak-pihak telah bersetuju untuk merekodkan perintah persetujuan berkaitan dengan empat bidang tanah dan jumlah yang dipersetujui untuk dipindahkan kepada plaintif adalah RM515,413.53, yang terdiri daripada separuh daripada pampasan yang diberikan berkenaan pengambilan empat bidang tanah oleh kerajaan. Oleh itu, plaintif telah memfailkan kes ini, menjangkakan bahawa suatu penyelesaian akan dicapai dengan defendan untuk dua bidang tanah yang tinggal ('dua tanah'). Dalam saman pemula ini ('lampiran 1'), plaintif memohon pengagihan jumlah pampasan berkenaan dengan dua tanah tersebut. Plaintif mendakwa bahawa mereka telah dengan teruk diprejudiskan akibat kelewatan yang tidak wajar oleh defendan dalam menguruskan harta pusaka sejak tahun 1997. Mereka berhujah bahawa mahkamah mempunyai kuasa untuk berbuat demikian di bawah A 80 k 2(3)(e) Kaedah-Kaedah Mahkamah 2012 ('KKM') memandangkan keperluan untuk memohon kepada mahkamah timbul daripada penolakan defendan untuk mengagihkan wang untuk dua tanah tersebut. Defendan berhujah bahawa permohonan plaintif dalam lampiran 1 adalah disalahertikan berdasarkan alasan bahawa: (a) defendan sebagai pentadbir harta pusaka boleh mengagihkan jumlah pampasan kepada plaintif walaupun pentadbiran harta pusaka masih belum lengkap; dan

(b) memandangkan defendan telah memasuki perintah persetujuan dengan seorang waris lain iaitu Karuppan Chettiar Muthu untuk pengagihan hasil jumlah pampasan, plaintif juga berhak untuk memasuki perintah persetujuan dengan defendan.

Diputuskan, membenarkan sebahagian permohonan:

(1) Dakwaan plaintif tentang kegagalan defendan untuk menguruskan harta pusaka dengan baik tidaklah tidak berasas. Prinsip dalam kes *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 tidak boleh dibaca secara berasingan dan defendan tidak boleh memilih keputusan dalam kes itu untuk disesuaikan dengan kedudukannya, setelah mengakui bahawa dia masih belum menguruskan harta pusaka selepas 27 tahun diamanahkan dengan surat-surat pentadbiran pada tahun 1997. Defendan tidak menunjukkan sebarang keterangan untuk menyokong kelewatan yang tidak wajar dalam mengagihkan pampasan setelah wang diperolehi. Defendan terikat untuk menguruskan harta pusaka dan mengagihkan aset kepada benefisiari dan tidak boleh menunggu selama-lamanya untuk menyelesaikan proses tersebut. Defendan, dengan menolak untuk mengagihkan hasil wang pengambilalihan dan melambatkan perkara ini ketika semua pihak semakin tua, telah meletakkan plaintif dalam situasi yang terdedah. Adalah wajar dan perlu bahawa mahkamah menggunakan kuasa sedia ada di bawah A 92 k 4 KKM untuk memberikan relif yang dipohon bagi mencegah ketidakadilan kepada benefisiari harta pusaka si mati. Memandangkan defendan gagal untuk menyediakan sebarang dokumen bagi menyokong dakwaannya bahawa dia perlu menguruskan harta pusaka dan menyelesaikan semua liabiliti terlebih dahulu, berdasarkan imbangan kebarangkalian, plaintif telah membuktikan bahawa tiada apa yang menghalang pengagihan sekurang-kurangnya pampasan untuk dua bidang tanah yang tinggal (lihat perenggan 26, 32, 37–39).]

Cases referred to

Chong Fook Sin v Amanah Raya Bhd (as the administrator for the estate of Raja Nong Chik bin Raja Ishak, deceased) & Ors [2011] 1 MLJ 721; [2010] 7 CLJ 917, FC (refd)

Chor Phaik Har v Farlim Properties Sdn Bhd [1997] 3 MLJ 188, FC (refd)

Kathryn Ma Wai Fong v Wong Kie Chie & Anor and other appeals [2024] 6 MLJ 276; [2024] 6 MLRA 858, CA (refd)

Kind Action (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2024] 5 MLJ 130; [2024] 6 MLRA 328, CA (refd)

Kiranjit Kaur a/p Dr Jagjit Singh (menyaman dalam keupayaan sebagai pentadbir bersama harta pusaka Suresh a/l Thanabalasingam, si mati) v Thamabalasingam @ Thanabalasingam (disaman dalam keupayaan sebagai pentadbir bersama harta pusaka Suresh a/l Thanabalasingam, si mati) [2022]

MLJU 829; [2022] 6 MLRH 549, HC (refd)
Lai Siew Yoong (sebagai pentadbir dan benefisiari kepada harta pusaka Chai Chee Fatt, si mati) v Pemungut Duti Setem [2020] MLJU 1733; [2021] 1 MLRH 543, HC (refd)
Lee Kwee Foh Sdn Bhd v Loke Kooi Chuan Properties Sdn Bhd & Anor [2024] MLJU 1357, CA (refd)
Lim Sok Wah v Lim Boon Cheow & Anor (administrators for the estate of Lim Theng Hoe, deceased) and another appeal [2021] 6 MLJ 234, CA (refd)
Pentadbir Tanah Daerah Petaling v Swee Lin Sdn Bhd [1999] 3 MLJ 489; [1998] 2 MLRA 438, CA (refd)
Soo Hoi Ling & Ors v Khoh Keow Bok & Ors [2019] MLJU 1569, HC (refd)
Vershures Creameries Ltd v Hull and Netherlands Steamship Company Ltd [1921] 2 KB 608, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 s 25A
Distribution Act 1958 s 6(1)(c)
Land Acquisition Act 1960 s 29
National Land Code s 327
Probate and Administration Act 1959 s 62
Rules of Court 2012 O 24, O 80 r 2, 2(1), 2(3)(e), O 92 r 4

Gary Xavier (with Paramanathan Kayambu) (Param & Co) for the plaintiffs.
PM Nagaran (with N Vinoshini) (Nagarajan Peri & Co) for the defendant.

Noor Ruwena J:

INTRODUCTION

[1] This is an appeal against the decision of this court delivered on 4 February 2025 whereby the the court decided the plaintiffs' application in the Originating Summons ('OS') No AB-24NCVC-190–07 of 2024 encl 1 mostly in their favour, and ordered that costs of RM10,000 to be borne by the defendant personally and not from the estate of the deceased, RM M SM Karuppan Chettiar @ SM KR Karuppan Chettiar @ SM KR Karuppan Chettiar son of Somasundaram Chettiar @ SM KR Karuppan Chettiar s/o Somasundaram Chettiar ('the said deceased').

[2] The OS was filed on 4 July 2024 and parties had been given the opportunity to file their respective replies and then written submissions, accordingly. During an e-review case management before me to fix the hearing date for encl 1, parties agreed for the matter to be heard on 12 December 2024 but on 11 December 2024, the eve of the hearing date, Messrs K Thushani & Co (second solicitor) wrote to the court requesting for the hearing to be postponed as they had just been appointed. The plaintiffs'

solicitors objected to the application, and the court did not allow it because all the cause papers and submissions had already been filed by Messrs Ven and Associates (first solicitor). Thus, the hearing went on in the afternoon of 12 December 2024, instead, and she relied on the written submissions that were filed by the first solicitor. The decision date was fixed for 16 January 2025 with the agreement of both solicitors.

[3] However, on 10 January 2025, encl 22 was filed to bring in third parties into the suit. The *Notis Kebenaran Untuk Mengeluarkan Notis Kepada Pihak Ketiga* was filed by the defendant's third solicitor (Messrs Nagarajan Peri & Co). They requested for the hearing of encl 22 to be conducted on the same date of the decision. On 16 January 2025, the court heard the preliminary objections raised by the plaintiffs' solicitors in regard to the last-minute application filed by the defendant's counsel. The intended third parties were solicitors and law firms who had acted upon the defendant's instructions in some conveyancing matters concerning the lands (subject-matter of the OS) and also his first solicitor Messrs Ven & Associates. After hearing the submissions by both sides, the court adjourned for decision to 4 February 2025 wherein on that date, the court dismissed encl 22 with no order as to costs because a third-party proceeding may be a separate cause of action pursued against them. The court then proceeded to pronounce its decision on encl 1 by partly allowing it. Hence, the present appeal.

[4] For the record, the defendant changed solicitors three times within the span of a few months (including the re-appointment of the first solicitor, Messrs Ven & Associates, who filed a *Notice Pertukaran Peguam* in March 2025, encl 37)! They filed the notice of appeal to the Court of Appeal on 3 March 2025 and recently a fourth solicitor (Messrs R Raja Gopal & Co) has filed a *Notis Pertukaran Peguam*, representing the defendant in the appeal.

THE CAUSE PAPERS

[5] The cause papers filed were as follows:

(a) originating summons dated 4 July 2024 (encl 1);

(b) the plaintiffs' affidavit-in-support affirmed on 17 June 2024 (encl 2);

(c) the defendant's affidavit-in-reply affirmed on 17 July 2024 (encl 5);

(d) the plaintiffs' affidavit-in-reply affirmed on 1 August 2024 (encl 6);

(e) the defendant's affidavit-in-reply (2) affirmed on 20 August 2024 (encl 7); and

(f) the plaintiffs' affidavit-in-reply (2) affirmed on 2 September 2024 (encl 8).

[6] I have taken the background facts from the cause papers filed by both parties and from the written submissions which have aptly summarised the case for both sides. But before that, in a previous suit before this court in Originating Summons No AB-24NCVC-105–07 of 2023 (previous OS), involving the same parties, they had agreed to record a consent order on 24 January 2024 without admission of liability. This concerned four other pieces of lands in the District of Manjung and the amount agreed to be transferred to the plaintiffs' solicitors was RM515,413.53. This amount comprised of half of the compensation awarded in respect of the acquisition of the four pieces of land by the government.

[7] Therefore, the plaintiffs filed the present suit, expecting that a settlement would be reached with the defendant for the remaining two pieces of lands. In the present OS, the plaintiffs sought the distribution of some compensation sum in respect of the remaining two pieces of lands ('the said lands'), as follows:

(a) land held under GM 2888, Lot No 4333, Mukim Beruas, District of Manjung; and

(b) land held under TDK (Now GRN 6218, Lot No 6165), Mukim Beruas, District of Manjung.

BACKGROUND FACTS

[8] The summary of facts from the defendant's submissions are that the plaintiffs are the beneficiaries to the estate of RM M SM Karuppan Chettiar @ SM KR Karuppan Chettiar @ SM KR Karuppan Chettiar son of Somasundaram Chettiar @ SM KR Karuppan Chettiar s/o Somasundaram Chettiar, deceased who passed away on 18 September 1995 ('the said deceased'). The defendant, one of the sons of the said deceased, is the administrator and beneficiary of the estate of the said deceased. The defendant was appointed as the lawful administrator of the estate of the deceased vide letters of administration dated 12 March 1997. The said lands were compulsorily acquired pursuant to s 29 of the Land Acquisition Act 1960. Vide various court orders obtained at the Ipoh High Court, a total sum of RM1,085,427.36 was awarded for the said lands. The plaintiffs as two out of the four beneficiaries of the said lands are now moving this court for the payment of RM542,713.68 to be distributed to them in respect of their entitlement to the said lands.

[9] The defendant also referred to another OS filed in this court by the defendant (as plaintiff) on 14 July 2021 in Originating Summons No AB-24NCVC-75–07 of 2021 ('OS-75') for the purposes of administering and distributing the assets of the estate of the deceased. There was an application for discovery of documents (encl 9 in OS-75) filed by the

defendants (the plaintiffs in this suit) and on 13 September 2022, the court allowed that application under O 24 of the Rules of Court 2012 ('the ROC') and made certain orders ('the said order'). There was also an unless order given in that application which resulted in an appeal filed by the defendant (Karuppan Chettiar Vairavan).

[10] On 29 September 2022, this court had granted an interim conditional stay of the said order subject to the undertaking by the plaintiff (defendant herein) that the plaintiff (defendant herein) will not deal with any of the properties of the estate of the deceased pending the disposal of the stay application. On 28 April 2023, this court varied the said order, particularly the unless orders granted against the plaintiff (defendant herein). Then on 11 August 2023, the plaintiff (defendant herein) discontinued his appeal at the Court of Appeal in respect of the said order, particularly the unless orders. Given these various interlocutory applications, the defendant submits that to date, the estate of the said deceased is yet to be wound up. The defendant avers that he is in the midst of completing the administration of the estate of the said deceased, and that this application by the plaintiffs should not be allowed as it is premature.

[11] The plaintiffs' averred that they had been extremely prejudiced by the defendant's inordinate delay in administering the estate since the letters of administration was granted on 12 March 1997. The plaintiffs submit they anticipated that the defendant will raise the issue that the plaintiffs, albeit being beneficiaries of the estate, have no interest in the estate of the deceased until the estate is wound up. The beneficiaries of the estate are as follows:

(i) the first plaintiff;

(ii) estate of Karuppan Chettiar Chidambaram — the second plaintiff;

(iii) the defendant;

(iv) Karuppan Chettiar Muthu;

(v) Karuppan Chettiar Annapoorani Achi — the deceased;

(vi) N Alamelu; and

(vii) R Meenatchi.

[12] They have been informed by the defendant that the beneficiaries named in (vi) and (vii) above have renounced their rights to the estate of their late father. The plaintiffs' mother, Karuppan Chettiar Annapoorani Achi, passed away on 29 July 1998. All the beneficiaries are Indian nationals and the surviving ones are residing there, except the administrator of the estate of the second plaintiff who resides in Kuala Lumpur and the defendant who resides in Taiping. The defendant himself would often travel to India.

[13] The plaintiffs alleged that the defendant have not informed them of the administration progress of the deceased's estate so far. A file search at the Ipoh High Court revealed that the Government of Malaysia had acquired six pieces of land from the estate as follows:

No	Description of Land	Amount Entitled (RM)
1	GM 1743 Lot 3555	391,850
2	GM 2888 Lot 4333	349,392
3	GM 2137 Lot 6907	48,800
4	GM 1057 Lot 10893	298,040.90
5	GM 3060 Lot 5051	240,097
6	TDK (GRN 62181) Lot 6165	682,502.10
	TOTAL	2,010,682

[14] The defendant did not participate in the acquisition proceedings as can be seen in exh P3 of encl 2 (pp 70–76). Hence, the Pentadbir Tanah Daerah Manjung in 2016 obtained leave of the Ipoh High Court to deposit the compensation money of *RM2,010,682* into court. Then, on Messrs Sault Scott & Co intervened in 2021 in the land acquisition proceedings and obtained the court's leave for the compensation money amounting to *RM2,010,682* to be paid to them from the court's account. It was this law firm which the defendant had sought to include as a third party in this suit.

[15] It was an undisputed fact that four pieces of land (ie Nos 1, 3, 4 and 5 in the table above) had been which the amount was RM1,030,827.06 had been agreed to be shared with the plaintiffs in the suit OS 75 (in the consent order dated 24 January 2024). But the two remaining lands have not been 'settled' by the parties; which was why the present suit was filed. The plaintiffs' solicitor had obtained confirmation from Bahagian Kewangan, Pejabat Ketua Pendaftar Mahkamah Persekutuan that the compensation money for the two pieces of land amounting to RM1,031,894.10 had been deposited into Messrs Sault & Scott's client's account (refer to exh P6 of encl 2 at p 118).

[16] Thereafter, the plaintiffs' solicitor wrote to Messrs Sault & Scott via letters dated 25 March 2024 and 22 April 2024 requesting for information on the land acquisition and status of compensation received. The response received from the latter on 2 May 2024 was that '... please be informed that the funds have been dealt with in accordance with the instructions from our client' and did not give details of the compensation amount despite having received the compensation money (refund) from the court (refer to exh P8 of encl 2 at pp 134–136 and exh P9 of encl 2 at pp 141–144). Despite the demand letter from the plaintiffs' solicitor dated 15 May 2024, they contended that Messrs Sault & Scott have failed and/or refused to reply to the plaintiffs' solicitor's letter and/or pay the remaining monies to them.

[17] The plaintiffs, being two of the four beneficiaries of the estate whom are entitled to 11 share of the compensation money awarded for the two pieces of land amounting to RM542,713.68, sought the court's order that the defendant pay them the said amount with interests and costs. They averred that they, as beneficiaries of the estate of the deceased, are also entitled to settle the matters such as the settlement done by the defendant with another beneficiary, ie his brother by the name of Muthu in Civil Suit No 22NCVC-06–03 of 2016 filed in the High Court at Taiping. Muthu as plaintiff in that suit had also averred that the defendant had failed in his duties as an administrator of the estate to wind up and administer all the properties of the deceased (refer to p 77 of exh K1 of encl 5). Among others, Muthu sought for 1/4 of the total share of the estate and damages for the inordinate delay in administering the estate. Now, ironically, Messrs Sault & Scott acted for Muthu in that action against the defendant.

[18] On 16 May 2016, Muthu and the defendant entered into a consent judgment where, amongst others, the former was declared to be entitled to 1/5 of the total assets of the deceased's estate in Malaysia, being a valid beneficiary (refer to exh K1 of encl 5 at pp 94–99). The plaintiffs alleged that Muthu and the defendant had entered into the consent judgment without the knowledge of the other beneficiaries at that time. The plaintiffs questioned the 'double standard' in the defendant's dealings with Muthu wherein the selectiy prejudve treatment had left the other beneficiaries in dire need of financial assistance, and the defendant's refusal to pay their entitlement of the acquisition money is highly prejudicial to them. Hence, there is more reason for interim distribution of the substantial estate monies to be carried out by the defendant.

EVALUATION AND FINDINGS OF THE COURT

[19] The application in encl 1 was made under O 80 r 2(1) of the ROC. The provision states:

> 2 Determination of questions without administration (O 80 r 2)
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> (1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

[20] The plaintiffs submits that the court is empowered to do so under O 80 r 2(3)(e), which reads '... (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court'. The need arose to apply to the court for the prayers in encl 1 because of the

defendant's refusal to distribute the monies in respect of the two lands abovementioned. In this regard, the plaintiffs referred the court to the case of *Kiranjit Kaur a/p Dr Jagjit Singh (menyaman dalam keupayaan sebagai pentadbir bersama harta pusaka Suresh a/l Thanabalasingam, si mati) v Thamabalasingam @ Thanabalasingam (disaman dalam keupayaan sebagai pentadbir bersama harta pusaka Suresh a/l Thanabalasingam, si mati)* [2022] MLJU 829; [2022] 6 MLRH 549 in support of their contention that the court is empowered to order an interim distribution of the estate of the deceased pending the final disposal of the matter.

[21] The defendant submits that the plaintiffs' application in encl 1, which is misconceived, premised on two grounds that:

(a) the defendant as administrator of the estate of the said deceased can distribute the compensation sum to the plaintiffs despite the incomplete administration of the estate of the said deceased; and

(b) since the defendant has entered into a consent order with Muthu for the distribution of the proceeds of the compensation sum, the plaintiffs are equally entitled to enter into a consent order with the defendant as well.

[22] The defendant contends that by virtue of the principle in the case of *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188, the beneficiaries have no interest whatsoever in the deceased's estate until the defendant winds up the estate and distribution made according to the law of distribution of an intestate estate. There, His Lordship Mohamed Dzaiddin FCJ explained that:

> Legal proposition
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> *It must be observed at the outset that there is no clear authority for the proposition that a beneficiary under an intestacy has no interest in the property of a deceased person until the estate has been fully administered*. In our view, however, there is much persuasive force in what is stated in the textbook on *The Law and Practice of Intestate Succession* by CH Sherrin and Bonehill. At p 93, the learned authors opined as follows:
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> > Questions accordingly arise as to the nature of the beneficiary's interest under an intestacy during the course of administration. Has he, for instance, an interest which is capable of being bequeathed by his will or of being disclaimed?
> >
> > There is considerable authority on this point and the answer to the questions posed are to be found in the House of Lords decisions in *Lord Sudeley v The Attorney General* [1897] AC 11 and *Dr Barnado's Homes National Incorporated Association v Commissioners For Special Purposes of the Income Tax Acts* [1921] 2 AC 1 and in the Privy Council decision in *Commissioner of Stamp Duties (Queensland) v Livingston* [1965] AC 694. Although these cases were all concerned with testate succession, the principles stated are usually regarded as being applicable equally to the nature of a beneficiary's right on intestacy. The basic principle appears from the *Barnado*'s case, where it was clearly stated:

> When the personal estate of a testator has been fully administered by his executors and the net residue ascertained, the residuary legatee is entitled to have the residue as so ascertained, with any accrued income, transferred and paid to him: but until that time, he has no property in any specific investment forming part of the estate or in the income from any such investment, and both corpus and income are the property of the executors and are applicable by them as a mixed fund for the purposes of administration.

We would also refer to a passage in *Executors, Administrators and Probate* (17th Ed, 1993) by Williams, Mortimer and Sunnecks which stated at p 1050:

> A residuary legatee has no interest in a defined part of the estate until the residue is ascertained, nor can income be ascribed to unascertained residue. *His right, which is of course transmissible, is to have the estate properly administered and applied for his benefit when the administration is complete. The right of a beneficiary claiming on a total intestacy is similar, except that he takes under a statutory trust for sale and conversion.* (Emphasis added.)

Based on the above commentaries, founded no doubt on the analogous principle of law concerning testate succession, it is our conclusion that in law, a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate. (Emphasis added.)

[23] The defendant also relied on the case of *Chong Fook Sin v Amanah Raya Bhd (as the administrator for the estate of Raja Nong Chik bin Raja Ishak, deceased) & Ors* [2011] 1 MLJ 721; [2010] 7 CLJ 917 which endorsed the principle in *Chor Phaik Har*. The plaintiffs submits that the defendant is directly telling the plaintiff to wait *indefinitely* for the defendant to wind up the estate. This court is mindful of what the Federal Court has stated in *Chor Phaik Har*'s case, but it is an undisputed fact that the defendant has not complied with this court's orders of 28 April 2023 which varied the previous order dated 13 September 2022; his justification is this is because the administration is incomplete and the estate is yet to be wound up. The plaintiffs urged the court nevertheless that its primary duty is to protect the welfare of the beneficiaries. The beneficiaries are prejudiced by the refusal of the defendant to distribute to them their entitlement under the land acquisition monies for more than 27 years now.

[24] I refer to the case cited by the defendant in *Soo Hoi Ling & Ors v Khoh Keow Bok & Ors* [2019] MLJU 1569 where the High Court stated:

> [11] *Firstly, an administrator's duty first and foremost is to discharge the debts and liabilities of the estate. The debts and liabilities are paid out of the assets of the estate. The known debts and liabilities are usually found annexed to the letters of administration. In the present case the letters of administration show numerous debts and liabilities of the deceased.* In this regard the law is trite: a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the

A administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate (per Mohamed Dzaiddin FCJ in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 and subsequently followed by the Federal Court in *Chong Fook Sin v Amanah Raya Bhd (as the administrator for the estate of Raja Nong Chik bin Raja Ishak, deceased) & Ors* [2011] 1 MLJ 721; [2010] 7 CLJ 917). This court is bound by the legal principle stated in the above cases. The estate in this case is yet to be administered. Therefore, the beneficiaries until such event takes place have no interest or property in the estate. In the circumstances, the second and third plaintiffs are not entitled to any monies until the administration of the estate is complete and distribution of the intestate estate determined pursuant to the law of distribution. The first plaintiff and the first defendant therefore cannot be ordered to release monies of the estate to the beneficiaries for whatever purpose before the estate is administered. (Emphasis added.)

[25] But this court also noted that His Lordship in that case has earlier stated:

> [9] *It is clear from the affidavits that the differences of the co-administrators have delayed the administration of the said estate which is further exacerbated by the present action*. There are allegations and counter allegations by both the co-administrators against each other: each blaming the other for dereliction of their duties as administrator.
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> [10] *However, this application does not concern the issue of dereliction of the co-administrator' duties. The issue is whether on the facts and circumstances of the present case this court ought to exercise its discretion in granting the interim mandatory injunction sought by the plaintiffs*. In my judgment the plaintiffs have failed to show an unusually strong and clear case that the mandatory injunction would probably be granted at the trial. A careful consideration of the facts and circumstances does not warrant an exercise of discretion granting the interim mandatory injunction against the co-administrators. My reasons are as follows:
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> > [11] Firstly, an administrator's duty first and foremost is to discharge the debts and liabilities of the estate ... (Emphasis added.)

[26] From the averments in the affidavits in the present case, I found that the plaintiffs' allegations about the defendant's failure to administer the estate properly was not unfounded. Again I emphasise that the defendant admits the administering of the estate is incomplete. But why has the defendant refused to give the plaintiffs information about the administration that he has done or not done (the subject-matter of encl 9 of OS-75)? And why is it taking too long? I am of the view that the principle in the case of *Chor Phaik Har* CANNOT be read in isolation and the defendant cannot pick and choose the rulings in that case to suit his position, after admitting that he still has not administered the estate after 27 years of being granted the letters of administration in 1997. The defendant must come to the court with clean hands. The list of assets in exh P1 of encl 22 revealed 66 assets (properties) not incuding monies and shares in the estate of the deceased. It is also clear from the letters of Messrs Sault & Scott

exhibited therein that at least six of the properties have been acquired by the government and the monies dispensed to the defendant. As administrator, why did the defendant not participate in the acquisition proceedings? The value of the lands had increased by at least ten-fold. For instance, for GM 1057 Lot 10893 the value at the time of acquisition was RM298,040.90 and in 1997 it was only worth RM24,900. The only liabilty listed then was the funeral expenses amounting to RM6,000.

[27] The defendant further submits that the consent order executed in 2016 with Muthu has yet to be executed. Therefore, a consent order which is yet to be executed remains merely as a paper judgment. Although the consent order has been entered into between the defendant and Muthu, the defendant is not permitted to give effect to the terms of the consent order until the administration of the estate of the said deceased is completed based on the trite principle explained above. His counsel submits there has been no breach whatsoever by the defendant. The defendant has remained consistent in his stance that the beneficiaries of an intestate estate has no interest or property in the estate of the said deceased until the administration of the estate of the said deceased is complete. In that regard, even if the defendant subsequently enters into a consent order with the plaintiffs for the distribution of the plaintiffs' share to the compensation sum of the said lands, such a consent order would merely be rendered a paper judgment, until and unless the administration of the estate of the said deceased is completed.

[28] The defendant admits that he filed OS-75 for the sole purpose of distributing the assets of the estate of the said deceased, which is still pending determination before this court and encl 1 cannot be granted by this court at this juncture. I am puzzled as to why he claims so because the records show that OS-75 has been disposed on 24 January 2024 when they entered into a consent order in OS No AB-24NCvC-105–07 of 2023 and withdrew OS-75 with no order as to costs on the same date. And OS-75 which was filed in 2021 was withdrawn after numerous postponements had been granted on the request of the plaintiff (the defendant here) purportedly to obtain documents in India and on account of his ill-health. It is safe for the court to conclude that the plaintiff's (the defendant here) suit OS-75 was withdrawn by himself after almost three years he filed it after he could not produce most of the documents that were requested for discovery by the defendants (the plaintiffs here).

[29] On record, the plaintiffs state that the defendant has paid the plaintiffs the sum of RM560,427.82 under Originating Summons No AB-24NCVC-105–07 of 2023 (the previous OS) for the acquisition of other lands of the estate. Hence, why is he now refusing to pay the acquisition monies for the other two pieces of lands? The plaintiffs submits that the defendant should not be allowed to approbate and reprobate: *Kind Action (M)*

Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2024] 5 MLJ 130; [2024] 6 MLRA 328.

[30] In the Court of Appeal case of *Lee Kwee Foh Sdn Bhd v Loke Kooi Chuan Properties Sdn Bhd & Anor* [2024] MLJU 1357, Justice Collin Lawrence Sequerah stated:

> [55] In the case of *Cheah Theam Kheng v City Centre Sdn Bhd (in liquidation) and other appeals* [2012] 1 MLJ 761; [2011] 2 MLRA 660; [2012] 2 MLRA 125; [2012] 2 CLJ 16 the Court of Appeal cited Sir Nicholas Browne-Wilkinson VC in *Express Newspapers Plc v News (UK) Ltd & Others* [1990] 3 All ER 376 as follows:
>
> > There is a principle of law of general application that it is not possible to approbate and reprobate. That means you are not allowed to blow hot and cold in the attitude that you adopt. A man cannot adopt two inconsistent attitudes towards another: he must elect between them and, having elected to adopt once stance, cannot thereafter be permitted to go back and adopt an inconsistent stance.

[31] The plaintiffs meanwhile, referred to another Court of Appeal case of *Kathryn Ma Wai Fong v Wong Kie Chie & Anor and other appeals* [2024] 6 MLJ 276; [2024] 6 MLRA 858 wherein His Lordship Justice Mohamed Zaini Mazlan referred to the English Court of Appeal case of *Vershures Creameries Ltd v Hull and Netherlands Steamship Company Ltd* [1921] 2 KB 608 and stated:

> [33] WKC and WKY could not approbate and reprobate. Given two choices, they must elect one stance. The English Court of Appeal in *Vershures Creameries Ltd v Hull and Netherlands Steamship Company Ltd* [1921] 2 KB 608 explained the concept of approbate and reprobate as follows: 'A plaintiff is not permitted to 'approbate and reprobate'. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument: *Ker v Wauchope* (1819) 4 ER 1(1); *Douglas-Menzies v Umphelby and Others* [1908] AC 224(2). The doctrine of election is not however confined to instruments. *A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction*'. (Emphasis added.)

[32] To conclude on this point, the plaintiffs submit that the defendant has made an option to pay the plaintiffs of their entitlement under the acquisition the defendant is now estopped by conduct to preclude later to change the stance. I agreed with the plaintiffs' submissions as the facts in the affidavits and exhibits filed by both parties speak for themselves. The defendant has not shown any proof to substantiate the inordinate delay in distributing the compensation after the monies have been obtained by Messrs Sault & Scott,

upon his own instructions. In the case of *Pentadbir Tanah Daerah Petaling v Swee Lin Sdn Bhd* [1999] 3 MLJ 489 at p 492; [1998] 2 MLRA 438 at p 440, the Court of Appeal stated:

> [10] Quite apart from the construction of para 1(3)(b) of the First Schedule, *there is a principle of great antiquity that a litigant ought not to benefit from its own wrong. Although of universal application, it has been restated when applied to a particular context. For example, the principle when applied in the context of the law of contract may be formulated as follows: a party ought not to be permitted to take advantage of his own breach*. See *Alghussein Establishment v Eton College* [1988] 1 WLR 587; *New Zealand Shipping Co Ltd v Societe Des Ateliers Et Chantiers De France* [1919] AC 1. (Emphasis added.)

[33] Coming back to the issue of the plaintiffs' reliance on O 80 r 2(1) which was not cited in the intitulment, the defendant submits that *Kiranjit Kaur Jagjit Singh* is not applicable and distinguishable on the present facts. In that case, the plaintiff's application was made pursuant to O 80 r 2 of the ROC. Here, the plaintiffs' application was filed, inter alia, premised on s 62 of the Probate and Administration Act 1959 and s 6(1)(c) of the Distribution Act 1958. But the plaintiffs also relied on O 92 r 4 which provides:

> Inherent powers of the Court (O 92, r 4)
>
> 4 For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[34] The defendant placed heavy reliance on the principle in *Chong Phaik Har*'s case without elaborating on the facts of that case. The plaintiffs submit that the case can be distinguished on the facts because there, it was on an issue whether the beneficiaries to an intestate estate has caveatable interest over their respective beneficial interest on a property. It primarily relates to s 327 of the National Land Code. Whereas, in our case at hand, it is on the monies they, as beneficiaries are legally entitled. Moreover, in that case, it was an issue where beneficiaries entered into an agreement to dispose their beneficial interest in an estate land. Unlike the case here where the plaintiffs are merely demanding their entitlement under the acquisition, which is legally theirs.

[35] The plaintiffs have also cited *Lai Siew Yoong (sebagai pentadbir dan benefisiari kepada harta pusaka Chai Chee Fatt, si mati) v Pemungut Duti Setem* [2020] MLJU 1733; [2021] 1 MLRH 543, where the court held in paras 23–28:

> [23] The reliance is misplaced. The principle enunciated therein must be viewed in the context of the facts of the cases.
>
> [24] *In Chor Phaik Har (supra), the executors and trustees of the beneficiaries entered into a sale and purchase agreement to sell the land which formed part of the estate of the*

deceased. The beneficiaries then entered a caveat on the land. The Federal Court had to decide whether the purchasers were 'a person aggrieved' under s 327 of the National Land Code to be entitled to have the caveat removed. The Federal Court held that until the estate has been fully administered and distribution made according to law, the beneficiaries have no interest or property in the estate to convey any title to the purchasers, so as to make them aggrieved by the existence of a caveat.

...

[26] *Both cases referred to essentially deal with the issue of beneficiaries' interest in the property in the context of entry and removal of a caveat. It has no application to the present case which concerns the interest of a beneficiary in the property for purposes of determining chargeable stamp duty.*

[27] I am of the view that by virtue of the Distribution Act 1958, the beneficiaries had a beneficial interest in the said properties which they could transfer to the plaintiff. They were clearly entitled to the 3/4 share. The administrators of the estate are obliged to transfer this share to the beneficiaries in administering the estate of the deceased. However this process was made unnecessary when the entitled beneficiaries made a gift of their 3/4 entitlement to the plaintiff.

[28] The beneficiaries therefore had an interest in these properties which are capable of being transferred by them, and which they did by affirming the affidavit of consent. For all intents and purposes, they had effectively made a gift to the plaintiff of their interest in the property. (Emphasis added.)

[36] The plaintiffs further distinguished the case of *Chong Fook Sin* on the facts where it concerned an application by the beneficiaries to intervene in a dispute on conspiracy to defraud, unlike the case here. Meanwhile, in the case of *Lim Sok Wah v Lim Boon Cheow & Anor (administrators for the estate of Lim Theng Hoe, deceased) and another appeal* [2021] 6 MLJ 234, the issue was whether a father could contractually deny two of his daughters from claiming their rightful shares in his assets under the Distribution Act 1958 upon his death intestate. The Court of Appeal allowed the appeal and held:

(1) The High Court judge in Appeal No 2641 failed to appreciate that LSW's cause of action was founded on her statutory right and entitlement as a beneficiary of the estate of the deceased to a distributive share in the subject property under the deceased's intestacy in accordance with the Distribution Act 1958. Her cause of action was not founded on contract or tort (see para 20).

(2) By the very express terms of the grant of letters of administration ('the grant'), the administrators were not only bound by the terms of the grant but also by the administration oath that they would 'administer the estate and the effects of the deceased and distribute the residue of his estate and effects according to law' and by the administration bond that they would 'administer according to law the moveable and immoveable property of the deceased' — the law being the law on intestacy under the Distribution Act (see para 23).

(3) ...

(4) ... The administrators were in no position to arrogate to themselves the right or authority to decide who, among the family members, were entitled to share in the subject property in disregard of their duty, oath and obligation under the grant, the administration oath and the administration bond and the law on intestacy under the Distribution Act. In law and principle, the administrators obtained their authority solely from the grant of letters of administration and not from the documents the deceased had executed, none of which had any testamentary effect (see paras 34, 36 & 37).

[37] The defendant also relied on the case above to defend its position that the plaintiffs have no right as beneficiaries as long as the estate has not been administered and wound up. But reading the case of *Lim Sok Wah* holistically, it appears that the rationale in the Court of Appeal's decision that besides the agreement being against public policy, *the administrators of the estate are not only bound by the terms of the grant but also by the administration oath that they would administer the estate and the effects of the deceased and distribute the residue of his estate and effects according to law*. Hence, the general principle is that the defendant is bound to administer the estate and distribute the asset to the beneficiaries, and I would add, not to wait forever to complete the process. I have to agree with the plaintiffs' submission that the defendant, by refusing to distribute the proceeds of the acquisition money and prolonging the matter when everyone is not getting any younger, has placed the plaintiffs in a vulnerable situation.

[38] Therefore, it is only right and necessary that this court exercises its inherent powers under O 92 r 4 of the ROC to grant the reliefs they sought under this application to prevent injustice to the beneficiaries of the estate of the said deceased. Particularly, the defendant arrogated to himself the right to decide who amongst the beneficiaries is entitled to the assets of the deceased. This was evident when he entered into a consent order with Muthu by declaring that the latter is entitled to 1/5 of the total assets of the estate but refused to do the same with the plaintiffs.

[39] *Given that the defendant has failed to provide any document in this application to support his assertion that he has to administer the estate and settle all the liabilities first, on a balance of probabilities, the plaintiffs have proved that there is nothing to hinder the distribution of at least the compensation for the remaining two pieces of lands*. I agree that surely after 27 years being administrator of the estate, he would have determined and paid the estate's liabilities, if any. However, as it is an undisputed fact that the defendant has not done so, it shows his failure to administer and wind up the estate expeditiously. Perusing his affidavits in reply filed by the first solicitor, I found that the documents exhibited were mostly regarding legal suits against him by the beneficiaries; no statements of accounts whatsoever.

[40] Section 25A of the Courts of Judicature Act 1964 provides the power of the court to grant interim payment. It provides:

> (1) As regards proceedings pending in the High Court, provision may be made by rules of court for enabling the Court in such circumstances as may be prescribed, to make an order requiring a party to the proceedings to make an interim payment of such amount as may be specified in the order, with provision for the payment to be made to such other party to the proceedings as may be so specified or, if the order so provided, by paying it into Court.

[41] The court makes the order as per the prayers in paras 1, 2 and 3 in encl 1 by invoking O 92 r 4 of the ROC to prevent injustice to the plaintiffs and the enabling provision is s 25A of the 1964 Act; the plaintiffs being elderly individuals whom are the legal beneficiaries of the estate of the deceased who have waited for more than 27 years for distribution of the estate to be completed. No interests on the costs of RM10,000 was awarded.

CONCLUSION

[42] Premised upon the above considerations, the court partly allowed the application in encl 1 with costs to be borne by the defendant personally.

Application allowed in part.

Reported by Nabilah Syahida Abdullah Salleh